MARC J. FAGEL (Cal. Bar No. 154425)
fagelm@sec.gov
ROBERT L. MITCHELL (Cal. Bar No. 161354)
mitchellr@sec.gov
MICHAEL S. DICKE (Cal. Bar No. 158187)
dickem@sec.gov
SHEILA E. O'CALLAGHAN (Cal. Bar No. 131032)
ocallaghans@sec.gov
SAHIL W. DESAI (Cal. Bar No. 197358)
desais@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. NANCY R. HEINEN and FRED D. ANDERSON, Defendants.	Case No. C-07-2214 (JF) **AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF THE ACTION

1. This matter involves improper stock option backdating at Apple Computer, Inc. ("Apple" or the "Company"), which resulted in the Company's issuance of false financial statements that concealed millions of dollars in executive compensation. On two occasions in 2001, Apple issued huge option grants to top executives, but used false grant dates to avoid reporting nearly $40 million in expenses to the public. Defendant Nancy R. Heinen, Apple's then-General Counsel, caused the options to be backdated and altered company records to conceal the fraud. Defendant Fred D.

Dockets.Justia.com

Anderson, Apple's then-Chief Financial Officer, should have noticed Heinen's efforts to backdate the first grant but failed to take steps to ensure that Apple's financial statements were correct. The two defendants personally benefited from the backdating, receiving several million dollars in unreported compensation as a result of the backdated options.

2. Under well-settled accounting principles in effect throughout the relevant period, Apple was not required to record an expense in its financial statements for options granted at the market price ("at-the-money"), but *was* required to record expenses for any options granted below the current market price ("in-the-money"). In order to provide herself and other Apple executives with far more lucrative in-the-money options, while avoiding having to inform shareholders of the millions of dollars in compensation expenses, Heinen twice engaged in a scheme to grant in-the-money options while falsifying records to make it appear that the options had been granted at-the-money. In connection with a 4.8 million-share grant to Apple's Executive Team, and a 7.5 million-share grant to Chief Executive Officer Steven Jobs, Heinen backdated the grants to dates on which the stock was trading at significantly lower prices. In each instance, Heinen fabricated or falsified company records to create the false appearance that the options had been granted at the market price on an earlier date – including the creation of minutes for a non-existent Board of Directors meeting at which the Jobs grant was supposedly authorized. For the Executive Team grant, Anderson should have recognized the implications of the backdated grant, put a stop to it, and disclosed it to Apple's auditors, KPMG LLP ("KPMG"), but failed to do so.

3. As a result, Heinen's and Anderson's actions caused Apple to materially understate its expenses, overstate its income, and falsely represent in certain filings that Apple had incurred no expense for options grants.

4. By engaging in the acts alleged in this Complaint, defendants Heinen and Anderson, among other things, violated the antifraud provisions of the federal securities laws, made or caused to be made materially false or misleading statements to Apple's auditors, falsified books and records, and caused Apple to falsely report its financial results. The Commission seeks an order enjoining defendants from future violations of the securities laws, requiring them to disgorge ill-gotten gains with prejudgment interest and to pay civil monetary penalties, barring Heinen from serving as an

officer or director of a public company, and providing other appropriate relief.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)].

6. This Court has jurisdiction over this action pursuant to Sections 20(c) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(c) and 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. The defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices and courses of business alleged in this complaint.

7. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Heinen and Anderson both reside in the Northern District of California, and acts or transactions constituting violations occurred in this district.

INTRADISTRICT ASSIGNMENT

8. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rules 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims occurred, among other places in this district, in Santa Clara County.

DEFENDANTS

9. Nancy R. Heinen, age 50, resides in Portola Valley, California. She has maintained an active license to practice law in California since 1982. At the time of the events alleged in the complaint, Heinen was Senior Vice President, General Counsel, and Corporate Secretary at Apple. In that position, among other things, Heinen had responsibility for overseeing Apple's legal group and preparing and certifying the minutes of Apple's Board of Directors and its committees. Heinen left Apple in May 2006. In sworn testimony during the Commission's investigation, Heinen declined to answer questions based on her rights under the Fifth Amendment.

10. Fred D. Anderson, age 62, resides in Atherton, California and was a licensed Certified Public Accountant in the State of California from 1975 to 1998. At the time of the events alleged in

the complaint, Anderson was Apple's Chief Financial Officer. After retiring from Apple in 2004, Anderson began serving as an Apple director, a position he held until his resignation from the Board in September 2006.

RELEVANT ENTITY

11. Apple is a Delaware corporation headquartered in Cupertino, California, located in Santa Clara County. Apple designs, develops, manufactures, and markets personal computers, portable digital music players, and related products. At the time of the events alleged in this complaint, Apple had common stock registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)], which was listed on the NASDAQ National Market.

FACTUAL ALLEGATIONS

Apple's Options Granting Program

12. During the late 1990s and early 2000s, Apple, like many other companies, made liberal use of employee stock options as a form of compensation to recruit, retain, and incentivize key employees. Each option gave the grantee the right to buy one share of Apple common stock from the Company at a set price, called the "exercise" or "strike" price, on a future date after the option vested. The option was "in-the-money" whenever the trading price of Apple's common stock exceeded the option's exercise price. The option was "at-the-money" whenever the trading price of Apple's common stock and the exercise price were the same. The option was "underwater" or "out-of-the-money" whenever the trading price of Apple's common stock was less than the exercise price.

13. Under the accounting rules in effect from the time Apple became a public company, U.S. public companies were permitted to grant stock options to employees without recording an expense so long as the options' strike price was at or above the market's closing price for the stock on the day the options were granted. However, when granting options in-the-money – that is, with a strike price below the market price when granted – public companies were required to record a compensation expense in their financial statements. Consequently, granting in-the-money options to employees could have a significant impact on the expenses and income (or loss) reported to the shareholders of a public company.

14. Throughout the relevant period, Apple represented, in audited financial statements and other filings with the Commission, that its option grants were made at fair market value, *i.e.*, the closing trading price of Apple common stock on the option's "measurement date," which is the date when the key terms of the options grant are fixed.

The January 17, 2001 Executive Team Grant

15. In early February 2001, Apple finalized the terms of a 4.8 million options grant to six members of its Executive Team, including one million options for Anderson and 400,000 for Heinen. At that time, Apple stock was trading at nearly $21 per share. However, Heinen caused Apple to backdate the grant to the Executive Team to January 17, 2001, when Apple's share price was only $16.81, and the strike price for the grant was set at this substantially lower price. Heinen also directed her staff to prepare documents that falsely indicated that Apple's Board had approved the Executive Team grant on January 17. By so doing, Heinen caused Apple to improperly fail to record approximately $18.9 million in compensation expense associated with the in-the-money Executive Team grant. Anderson was aware of the manner in which the price of the Executive Team grant was selected, and its impact on Apple's reported compensation expense should have been clear to him.

A. Heinen Picks An Earlier Date and Price for the Executive Team Grant

16. Around late 2000, Apple's Board had begun considering a large options grant to Apple's Executive Team. On January 30, 2001, Heinen provided Jobs with a list of the daily closing share prices of Apple's common stock for January 2001 and suggested that Apple use an earlier date and price for the Executive Team options grant.

17. In her January 30 e-mail, Heinen wrote: "There are 6.68m shares available for grant in the 1998 Executive Officer plan. To avoid any perception that the Board was acting in appropriately [sic] for insiders prior to Macworld announcements, I suggest we use Jan. 10, the day after your Macworld keynote, at $16.563. That was one of the lowest closes of the month, after the $14.875 price on Jan 2. I don't think the [Executive Team] would object to the $1.688 difference to avoid claims of inappropriate conduct."

18. On January 31, 2001, Heinen sent the same set of January closing prices to Anderson and recommended picking Tuesday, January 17 or Monday, January 22 as ostensible grant dates. Heinen

subsequently corrected her earlier e-mail, noting that the 16th actually fell on a Tuesday. Anderson replied that "Tuesday the 16th looks fine to me."

19. The following day, February 1, 2001, Heinen told Anderson that Jobs had agreed to use Apple's closing price on January 17th for the Executive Team grant. Heinen began the process of preparing false paperwork to submit to Apple's Board of Directors so that it could authorize the grant. That same day, Heinen directed a lawyer in Apple's Legal Department to prepare a Unanimous Written Consent ("UWC") for the Board members' signature, with "an effective date of Jan 17, 2001, priced at $16.813." Contrary to these representations, no actual Board action was taken on January 17, and Heinen only began the process of selecting the grant date and price on January 30.

20. Once the UWC was finalized, Heinen then forwarded the options grant paperwork to Apple's Board, with a copy to Anderson. Heinen's cover memorandum (dated February 1) asked the Board to sign and return the UWC to her by fax, "if approved." Apple's directors subsequently signed the UWCs and returned them to Heinen.

21. Heinen received the UWCs by February 7, 2001. Apple's stock closed at $20.75 per share on that date, approximately $3.94 higher than the January 17 price used for the Executive Team grant. As a result, the Executive Team grant was in-the-money by approximately $3.94 per share when granted.

B. The Executive Team Grant Backdated to January 17, 2001 Caused Apple's Filings with the Commission to be False

22. As a public company, Apple filed with the Commission annual reports that included audited financial statements, certified by the Company's outside auditors, KPMG. Apple's public filings affirmatively stated that the Company accounted for stock options granted to employees in accordance with generally accepted accounting principles, also known as GAAP, which are the accounting conventions, standards, and rules required for preparing financial statements. GAAP required an expense to be recorded for stock options granted at prices below the market value for the stock on the date of the grant.

23. Throughout the period, Apple accounted for stock options using APB 25. Under APB 25, employers were required to record an expense on their financial statements for the in the-money

portion of any options grant. An option with an exercise price lower than the quoted market price on the date of actual grant is considered in-the-money. According to APB 25, that difference must be recorded as compensation expense to be recognized over the vesting period of the option. APB 25 allowed companies, where the key terms of an option grant were certain, to grant employee stock options without recording any compensation expense so long as the option exercise price was not below the stock's market price on the date of the grant.

24. Apple's failure to record a compensation expense in connection with the Executive Team grant resulted in overstated income (or understated loss) on its financial statements for fiscal years 2001 and 2002. For example, in Apple's financial statements in its Form 10-K for fiscal year 2001, ended September 29, 2001, the failure to record a compensation expense for the January grant caused Apple's net loss to be understated by 10.77%; for fiscal 2002, ended September 28, 2002, the failure to record an expense caused operating income to be overstated by 23.5% and net income by approximately 5%. Similarly, Apple's financial statements in its Forms 10-Q for the second and third quarters of 2001, ended March 31, 2001 and June 30, 2001, respectively, and its Forms 10-Q for the first, second, and third quarters of 2002, ended December 29, 2001, March 30, 2002, and June 29, 2002, respectively, also contained material misstatements to net and operating income (or loss). Apple also sold securities pursuant to offering documents, including registration statements on Forms S-8 filed May 18, 2001, September 28, 2001, December 24, 2001, December 24, 2002, and June 24, 2003, which incorporated the false financial statements. In its Forms 10-K and Forms S-8 filings, Apple also falsely disclosed that it did not recognize any compensation expense for options because it did not grant in-the-money options. At this time, Heinen and Anderson both reviewed Apple's financial statements for accuracy and completeness prior to filing.

25. Apple's proxy statements (which were sent to its shareholders) for fiscal year 2001, filed March 21, 2002, and fiscal year 2002, filed March 24, 2003, contained false disclosures. Among other things, the discussion on executive compensation falsely states that the Executive Team received their options "at an exercise price equal to the fair market value of the Common Stock on the date of grant" and that the date of grant was January 17, 2001. At this time, Heinen assisted with

the preparation of Apple's proxy statements, and Heinen and Anderson both reviewed the statements for accuracy and completeness prior to filing.

26. After the grant had been issued, KPMG, Apple's auditors, received a copy of the backdated January 17, 2001 UWC confirming the Executive Team grant. Heinen and Anderson were both aware that Apple routinely provided UWCs to KPMG in connection with its audit work.

27. In addition, Anderson signed a management representation letter dated October 16, 2001 to KPMG for fiscal year 2001 indicating that the company's stock options were "granted at fair value at the date of grant." Because he knew the manner in which the January 17, 2001 date was selected for the Executive Team grant, Anderson should have known that these statements were inaccurate.

28. Heinen and Anderson both signed and caused to be filed with the Commission false Forms 5 (disclosing their annual statements of changes in beneficial ownership of Apple securities) that incorrectly disclosed the grant date for their options grants as January 17, 2001.

C. Heinen and Anderson Were Aware That In-the-Money Grants Needed to be Expensed

29. Heinen understood the accounting implications of awarding an in-the-money options grant. She knew that Apple would have to record an accounting expense for any options that were granted below fair market value on the date of the grant. She also knew the requirements for the determination of a measurement date for grants.

30. Anderson also understood that Apple would have to appropriately account for an in-the-money grant. A former certified public accountant, Anderson was familiar with Accounting Principles Board Opinion 25, *"Accounting for Stock Issued to Employees"* ("APB 25"), the accounting literature that dictates how to account for the granting of an in-the-money stock option.

D. Heinen and Anderson Received Ill-Gotten Gains from the Backdated Grants

31. Pursuant to the backdated Executive Team grant, Heinen and Anderson received grants that were in-the-money by approximately $3.94 per share. Anderson exercised and sold 750,000 of the 1,000,000 shares granted to him before he retired from Apple in 2004; Heinen exercised and sold all 400,000 options she received. At a minimum, Heinen and Anderson reaped improper benefits of approximately $1.6 million and $3 million, respectively.

32. Heinen was also unjustly enriched, through, among other things, the exercise of additional stock options and the sale of Apple stock at prices fraudulently inflated as a result of Apple's false financial statements.

The October 19, 2001 Steve Jobs Grant

33. On December 18, 2001, Apple and Steve Jobs concluded lengthy negotiations over the terms of a 7.5 million share options grant to Jobs. At that time, the share price of Apple stock was $21.01. However, Heinen backdated the grant to Jobs to October 19, 2001, when Apple's share price was only $18.30, and the strike price for the grant was set at this substantially lower price. Heinen also created fictitious Board minutes that purported to show that the Board had approved the grant to Jobs on October 19 at a "Special Meeting," which never occurred. By so doing, Heinen caused Apple to improperly fail to record $20.3 million in compensation expense associated with the in-the-money options grant to Jobs.

A. Heinen Backdates the 7.5 Million Option Grant to Steve Jobs

34. Beginning in the spring of 2001, Apple's Board began considering ways to increase Jobs's compensation. Since returning to Apple in July 1997, Jobs had been paid only $1 a year in compensation for his services. Although he had received a grant of 10 million options in January 2000, those options were significantly underwater as a result of declines in Apple's stock price.

35. On August 29, 2001, Apple's Board granted options for Jobs to purchase 7.5 million shares of Apple common stock at an exercise price of $17.83 per share, the closing price of Apple's stock on that day.

36. Shortly after the Board approved the 7.5 million option grant, Jobs expressed dissatisfaction with its vesting schedule. Over the course of the next three months, Apple's Compensation Committee spoke frequently amongst themselves and with Jobs about the grant, holding multiple discussions and conference calls, including Compensation Committee meetings on October 16 and 19 and November 19 and 20. Heinen was aware of and involved in these discussions, and she attended the Compensation Committee meetings in her role as Corporate Secretary.

37. As the Compensation Committee's discussions with Jobs continued, Heinen became increasingly concerned about the delay. Apple had missed the November deadline by which Apple

was supposed to file a Form 4 with the SEC reporting the specifics of Jobs's August 29 options grant. In addition, Heinen also foresaw a problem with the auditors, since Apple's fiscal year had concluded at the end of September, yet Apple had not disclosed the grant to KPMG.

38. By mid-December, it was evident to Heinen that the August 2001 grant date would no longer withstand scrutiny. Instead, she began to consider the possibility of selecting a different grant date in the new fiscal year. On December 17 – by which time Apple's stock price had risen significantly – Heinen forwarded a spreadsheet to the chair of Apple's Compensation Committee detailing three months of Apple's closing prices and recommending the selection of a day for the backdated options grant. She wrote: "There are several days in October and November, following the first meeting of the Compensation Committee on October 16th and after our earnings call on October 17th, that are close to the Aug. 29th close of $17.83. I suggest using a day that the Compensation Committee held a telephone call, either jointly or individually with the members."

39. On December 18, 2001, the Compensation Committee and Jobs finally came to an agreement on the vesting schedule for the 7.5 million share grant. The following day, the chair of the Compensation Committee e-mailed Apple's full Board to let them know the specifics of the grant, including the fact that the date of grant would be October 19, 2001, which corresponded to the date of a Compensation Committee call. He noted: "For the record, I informed Nancy [Heinen] in advance of our intentions and of the above specifics to be certain we were conforming to all legal requirements/guidelines." Heinen received a copy of the e-mail.

40. On December 18, 2001, Apple's common stock closed at $21.01. Hence, by retroactively repricing the grant to October 19 (when the stock closed at $18.30), Heinen caused Apple to award Jobs 7.5 million in-the-money options while avoiding reporting approximately $20.3 million in pre-tax compensation expense.

B. Heinen Creates False Corporate Documents

41. To substantiate October 19, 2001 as the grant date for Jobs's grant, Heinen had fictitious minutes created for a phony "Special Meeting" of Apple's Board of Directors. Minutes purporting to be from the October 19, 2001 Special Meeting state that all of the Board members (other than Jobs) met to discuss CEO compensation. According to the minutes, the Board voted to approve a grant to

Jobs of an option to purchase 7.5 million shares at an exercise price equal to the closing price on the date of the grant (October 19). In fact, no such meeting occurred.

42. Heinen directed her staff to prepare the "Special Meeting" minutes in January 2002. After the draft was prepared, Heinen reviewed and signed the minutes as Corporate Secretary, falsely certifying that the minutes were accurate.

43. Heinen similarly signed a "Secretary's Certificate," included with the Board minutes, falsely attesting that the Board met on October 19, 2001 and in that meeting granted Jobs the options to purchase 7.5 million shares at the exercise price of $18.30 a share (the October 19 closing price). Heinen affixed Apple's corporate seal to the document and attested that she did so on November 2, 2001. However, this document was not even created until January 2002, making Heinen's certification patently false.

44. Heinen also caused the alteration of previously-approved official corporate minutes from the August 29, 2001 Board meeting and the October 16, 2001 Compensation Committee meeting in order to conceal the backdating. Draft minutes for the August 29 meeting, which were reviewed and approved by Heinen, stated that the Board, in executive session, "granted Mr. Jobs a stock option under the 1998 Executive Officer Stock Plan to purchase 7.5 million shares of common stock." These draft minutes were circulated to the Board before the November 13, 2001 regularly-scheduled Board meeting and approved at that meeting. However, the official minutes that appear in Apple's Minutes Books (which were provided to the company's auditors) were altered to delete the reference to the Jobs grant, instead simply noting that the Board authorized the Compensation Committee to establish compensation arrangements for Jobs. The changed minutes were not presented to the Board for approval. Heinen signed the modified minutes, thus falsely attesting to their accuracy.

45. Similar alterations were made to the draft minutes of the October 16, 2001 Compensation Committee meeting. The draft minutes, which Heinen had reviewed and approved, indicated that the Compensation Committee "discussed options granted to Steve Jobs at the August 29, 2001 Board meeting." Again, the official corporate minutes for Apple were altered to remove this reference. Heinen signed the expurgated October 16 minutes, thus falsely attesting to their accuracy.

C. The Backdated Grant Causes Apple's Filings With the Commission to be False

46. As a result of Heinen's actions, Apple failed to record an expense for the Jobs grant in its financial statements, including Apple's Form 10-K for its fiscal year ended September 28, 2002. This failure caused Apple to materially overstate its operating income by 47.1% and its net income by 9.2%, for the 2002 fiscal year. Similarly, Apple's financial statements in its Forms 10-Q for the first, second, and third quarters of 2002, ended December 29, 2001, March 30, 2002, and June 29, 2002, respectively, also contained material misstatements to net and operating income (or loss). In addition, Apple sold securities pursuant to offering documents, including registration statements on Forms S-8 filed May 18, 2001, September 28, 2001, December 24, 2001, December 24, 2002, and June 24, 2003, which incorporated the false financial statements. In its Forms 10-K and Forms S-8 filings, Apple also falsely represented that it did not recognize any compensation expense for options because it did not grant in-the-money options. In addition, Apple's Form 10-K for its fiscal year ended September 29, 2001 omitted that Apple's Board of Directors had approved a grant to Jobs on August 29, 2001. At this time, Heinen reviewed Apple's financial statements and other filings for accuracy and completeness prior to filing.

47. Apple's proxy statement for fiscal year 2002, filed March 24, 2003, also falsely disclosed that "in October 2001 the Compensation Committee recommended and the Board approved [Jobs's 7.5 million options grant]," and that Jobs's options were granted at $18.30 per share, which was "equal to the fair market value of the Common Stock on the date of grant." In addition, Apple's proxy statement for fiscal year 2001, filed March 21, 2002, omitted to state that Apple's Board of Directors had approved a grant to Jobs on August 29, 2001. Heinen assisted with the preparation of Apple's proxy statements, and Heinen reviewed the statements for accuracy and completeness prior to filing.

48. Heinen was aware that Apple's outside auditors, KPMG, received only the doctored grant documents. KPMG received a copy of the fabricated minutes from the October 19 "Special Meeting" of the Board of Directors, as well as Heinen's Secretary's Certificate vouching for those minutes. Heinen knew that Apple routinely furnished minutes from Apple Board meetings to KPMG as part of

KPMG's review and that KPMG would rely on the expurgated August 29 Board minutes, which were altered to delete any reference to the original 7.5 million share grant.

Apple's Restatement for Options Expenses

49. On December 29, 2006, Apple filed restated financial statements to recognize additional compensation expense because of the use of the wrong dates for 6,428 stock option grants made from October 1996 through January 2003. In total, Apple recognized $105 million in pre-tax expense over 5 years. This included $18.9 million in pre-tax expense associated with the Executive Team grant that was backdated to January 17, 2001 and $20.3 million in pre-tax expense associated with the Jobs grant that was backdated to October 19, 2001.

50. For Apple's 2002 fiscal year, the failure to record an expense associated with the in-the-money portions of the Executive Team grant and the Jobs grant resulted in a combined 71% overstatement of reported operating income and a combined 16% overstatement of reported net income.

FIRST CLAIM FOR RELIEF

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder by Heinen)

51. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

52. By engaging in the conduct described above, Heinen, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

53. By reason of the foregoing, Heinen has violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

(Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder by Heinen)

54. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

55. By engaging in the conduct described above, Heinen, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

56. Heinen knowingly provided substantial assistance to another person's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], and therefore is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

57. Unless restrained and enjoined, Heinen will continue to violate and aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF

(Violations of Section 17(a)(1) of the Securities Act by Heinen)

58. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

59. By engaging in the conduct described above, Heinen, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails with scienter employed devices, schemes, or artifices to defraud.

60. By reason of the foregoing, Heinen violated, and unless restrained and enjoined, will continue to commit violations of, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

FOURTH CLAIM FOR RELIEF

(Violations of Sections 17(a)(2) and (3) of the Securities Act by Defendants)

61. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

62. By engaging in the conduct described above, Heinen and Anderson, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails:

(a) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(b) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

63. By reason of the foregoing, Heinen and Anderson have violated, and unless restrained and enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

FIFTH CLAIM FOR RELIEF

(False Statements and Omissions to Accountants and Auditors—
Violation of Rule 13b2-2 by Defendants)

64. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

65. By engaging in the acts and conduct alleged above, Heinen and Anderson, directly or indirectly, made or caused to be made a materially false or misleading statements or omitted to state or caused another person to omit to state, material facts necessary in order to make statements made,

in light of the circumstances under which such statements were made, not misleading to an accountant in connection with an audit or examination of the financial statements of Apple required to be made or the preparation or filing of reports required to be filed by Apple with the Commission.

66. By reason of the foregoing, Heinen and Anderson have violated and, unless restrained and enjoined, will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

SIXTH CLAIM FOR RELIEF

(False Periodic Reports—Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 Thereunder by Defendants)

67. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

68. Based on the conduct alleged above, Apple violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13], which obligate issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission accurate annual and quarterly reports.

69. By engaging in the conduct alleged above, Heinen and Anderson knowingly provided substantial assistance to Apple's filing of materially false and misleading reports with the Commission.

70. By reason of the foregoing, Heinen aided and abetted violations by Apple of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]. By reason of the foregoing, Anderson aided and abetted violations by Apple of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]. Unless restrained and enjoined, Heinen and Anderson will continue to aid and abet such violations.

SEVENTH CLAIM FOR RELIEF

(Inaccurate Books and Records—Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act by Defendants)

71. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

72. Based on the conduct alleged above, Apple violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78*l*] to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

73. By engaging in the conduct alleged above, Heinen and Anderson knowingly provided substantial assistance to Apple's failure to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets.

74. By reason of the foregoing, Heinen and Anderson have aided and abetted violations by Apple of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Unless restrained and enjoined, Heinen and Anderson will continue to aid and abet such violations.

EIGHTH CLAIM FOR RELIEF

(Inadequate Internal Accounting Controls—Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act by Defendants)

75. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

76. Based on the conduct alleged above, Apple violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78*l*] to devise and maintain a sufficient system of internal accounting controls.

77. By engaging in the conduct alleged above, Heinen and Anderson knowingly provided substantial assistance to Apple's failure to devise and maintain a sufficient system of internal accounting controls.

78. By reason of the foregoing, Heinen and Anderson have aided and abetted violations by Apple of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Unless restrained and enjoined, Heinen and Anderson will continue to aid and abet such violations.

NINTH CLAIM FOR RELIEF

(Falsifying Books and Records or Circumventing Internal Accounting Controls—Violation of Section 13(b)(5) of the Exchange Act by Heinen)

79. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

80. By the conduct alleged above, Heinen violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a system of internal accounting, or knowingly falsifying certain books, records, and accounts.

81. Unless restrained and enjoined, Heinen will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

TENTH CLAIM FOR RELIEF

(Falsifying Books and Records—Violation of Rule 13b2-1 of the Exchange Act by Heinen)

82. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

83. By engaging in the conduct described above, Heinen falsified or caused to be falsified Apple's books, records and accounts in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

84. Heinen has violated and, unless restrained and enjoined, will continue to violate, Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

ELEVENTH CLAIM FOR RELIEF

(False Proxy Statements—Aiding and Abetting Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Thereunder by Defendants)

85. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

86. Based on the conduct alleged above, Apple violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9], which prohibits solicitations by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, that contain a statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements therein not false or misleading or necessary to

correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which had become false or misleading.

87. By engaging in the conduct alleged above, Heinen and Anderson knowingly provided substantial assistance to Apple's false or misleading proxy statements.

88. By reason of the foregoing, Heinen and Anderson have aided and abetted violations by Apple of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] thereunder. Unless restrained and enjoined, Heinen and Anderson will continue to aid and abet such violations.

TWELFTH CLAIM FOR RELIEF

(Beneficial Ownership Reporting—Violations of Section 16(a) of the Exchange Act and Rule 16a-3 Thereunder by Defendants)

89. The Commission realleges and incorporates by this reference Paragraphs 1 through 50, above.

90. Based on the conduct alleged above, Heinen and Anderson violated Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3] thereunder, which require officers, directors and beneficial owners of more than ten percent of any class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C § 78l] to file periodic reports disclosing any change of beneficial ownership of those securities.

91. Heinen and Anderson have violated and, unless restrained and enjoined, will continue to violate, Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Heinen from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a)], and Rules 10b-5, 13b2-1, 13b2-2, and 16a-3 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, and 240.16a-3], and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-13, and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, and 240.14a-9] thereunder;

II.

Permanently enjoin Anderson from directly or indirectly violating Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)] and Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 13b2-2 and 16a-3 thereunder [17 C.F.R. §§ 240.13b2-2 and 240.16a-3], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 12b-20, 13a-1, 13a-13, and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, and 240.14a-9] thereunder;

III.

Prohibit Heinen, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78*l*] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78*o*(d)];

IV.

Order defendants Heinen and Anderson to disgorge any wrongfully obtained benefits, including prejudgment interest.

V.

Order Heinen and Anderson to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: May 16, 2007

Respectfully Submitted,

Robert L. Mitchell
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION